CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87472 of 2017

(Arising out of Order-in-Original No. PUN-SVTAX-000-COM-001-17-18 dated 17.05.2017 passed by The Commissioner, Central Tax, GST, Pune-I.)

Commissioner of Central Excise and Service Tax, Pune-I ....**Appellant**
41-A, ICE House, Pune,
Maharashtra-411 001.

Versus

M/s. Aspen Infrastructure Limited .... **Respondent**
Godrej Millennium, 5th Floor, 9, Koregaon,
Park Road, Pune, Maharashtra-411 001.

APPEARANCE:

Shri C.S. Pavan, Authorized Representative for the Appellant

Shri Jay Chheda, Advocate for the Respondent.

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85024/2026

Date of Hearing: 05.01.2026
Date of Decision: 05.01.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. The respondent herein is engaged *inter alia*, in providing various taxable services to the units located in the Special Economic Zone (SEZ) and did not pay service tax in terms of Notifications No. 17/2011-S.T., dated 01.03.2011, No. 40/2012-S.T., dated 20.06.2012 and No. 12/2013-S.T., dated 01.07.2013. Non-payment of service tax on taxable services provided to the SEZ units by the respondent was disputed by the department on the ground that the benefit of exemption provided under the said notifications shall not

be available inasmuch as the respondent did not submit the requisite Form A-1/A-2 before the jurisdictional service tax authorities prior to provision of the taxable services. The Show Cause Notice (SCN) dated 13.12.2016 issued in this regard, was adjudicated by the learned Commissioner of Service Tax, Pune vide the impugned order dated 17.05.2017. In the said impugned order, the learned adjudicating authority has dropped the show cause proceedings initiated by the department on the ground that non-submission of Forms A-1 and A-2 are procedural in nature inasmuch as the mandatory requirement of provision of taxable service to the SEZ units have been duly complied with. Revenue has assailed the impugned order by way of filing the appeal before the Tribunal on the ground that the respondent did not substantiate its claim for the benefit provided under the said notifications inasmuch as no co-relation was established to show that the disputed services were actually used for the intended purpose by the SEZ Units.

3. On perusal of the case records, more particularly the Annexure-1 attached to the SCN dated 13.12.2016, we find that in respect of demand of service tax, for which the Forms A-1/A-2 had already been received, the department had deducted such amount and proposed for recovery of the service tax amount with regard to the services for which the said Forms were received subsequently by them. Since, the grounds urged by the Revenue in this appeal regarding establishment of nexus between the disputed service and usage of the same by the SEZ Unit, was not a subject matter of dispute in the SCN, in our considered view, Revenue's stand on an entirely new fact cannot be accepted as proper and valid. Further, it is not the case of Revenue that the appellant had not provided the service to the SEZ Units and for that purpose, obtain the requisite forms for the SEZ Units for submission before the departmental authorities. Since, the said notifications have not specifically provided any timeline for submission of the A-1/A-2 Forms, submission of the said forms by the appellant at a later stage cannot be a defensible ground for denying the benefit of exemption provided in the said notifications. In other words, submission of A-1 certificate is the proof of provision of the taxable services to SEZ Units, which are mandatory in nature and submission of the requisite certificate belatedly can be considered as the procedural infraction, for which the substantive right to claim the benefit of exemption cannot be whittled down.

4. In view of the foregoing discussions, we do not find any infirmity in the impugned order passed by the learned adjudicating authority. Therefore, the appeal filed by Revenue is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM